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Compagnie Due Cambodge (Claire Estate) Cha'ah v Boy Kanamah @ Nadarajah & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J–02–101 OF 2002
ABDUL KADIR SULAIMAN, TENGKU BAHARUDIN SHAH AND AZMEL
B JJCA
6 JANUARY 2006

Labour Law — Employment — Termination — Withdrawal of notice of termination — Whether on the given facts the appellant is entitled to withdraw the termination notice
C *given to the respondents unilaterally — Whether employees entitled to termination benefits*

The first respondent was a mandore and the rest were rubber tappers employed by the Claire Estate owned by the appellant. The appellant by a letter dated 31 October
D 1995 gave them eight weeks termination notice to take effect from 1 January 1996. However, some 40 days before 1 January 1996, the appellant by a letter dated 20 November 1995 withdrew their termination letter, and requested the respondent to treat the earlier letter of 31 October 1995 as withdrawn and cancelled and they were told to report for work as usual on 1st January. The respondents requested the
E appellant to abide by its letter of 31 October 1995 and to make appropriate steps to pay out the termination benefits, as promised, on expiry of the termination notice. The appellant responded by its letter of 8 December 1995 maintaining the validity of its stand to withdraw the letter of 31 October 1995 on grounds that the withdrawal of the notice of termination was effected well in advance of the expiry of the notice period. As such, the respondents were accordingly advised to abide by the
F estate's decision on the matter and to report for work as usual on 1 January 1996. This time they were warned that failure to report for work on that date would tantamount to abandoning their contract of service with the estate. The respondents did not return to work on 1 January 1996. A show cause letter was sent to the respondents dated 3 January 1996 and since nothing came out of that, the appellant
G on 16 January 1996 issued letters to the respondents informing them to the effect that since they have decided not to return to work, they have therefore, abandoned their contract of service with the company. The learned judge of 15 October 1999 affirmed the decision of the Penolong Pengarah Buruh Kanan, Segamat ('the Pengarah'), allowing the claim of the respondents for termination benefits under the Employment (Termination and Lay-Off Benefits) Regulations 1980 ('the 1980
H Regulations'). The Pengarah made an order for the appellant to pay the respondents RM114,001.42 as such benefits because the appellant could not withdraw unilaterally its notice to terminate the services of the respondents.

I **Held**, allowing the appeal:

(1) On the facts, the withdrawal of the letter of notice dated 31 October 1995 was made by the appellant 'not less than seven days' as so provided by the express provisions of reg. 4(3) Employment (Termination and Lay-Off Benefits) Regulations 1980, before the date with effect from which the services of the

respondents were to be terminated, which was to be on 1 January 1996. There was nothing in the provisions of the 1980 Regulations which required the appellant to consult the respondents. The notice given in the letter of 31 October 1995 was not of immediate effect. It was to be effective only on 1 January 1996. It was contingent in nature. For so long as the provisions of reg 4(3) of the 1980 Regulations was complied with, the appellant may unilaterally withdraw the notice letter of 31 October 1995 which it did in this case. If that happens, the respondents would not be entitled to any termination benefits (see para 10).

(2) In the present case, the basis was not the contract law because the claim by the respondents was on the 1980 Regulations. Hence, that Regulations must determine the issue at hand. The Regulations by the provisions of reg 4(3) thereof expressly allowed the appellant to withdraw such a notice and to offer to renew the respondents' contract of service or to re-engage the respondents under a new contract provided he did so, not less than seven days before 1 January 1996, thereby disentitling the respondents from receiving any termination benefits payment. In this case, the appellant did so by its letter of 20 November 1995 complying with the necessary requirements of reg 4(3) of the Regulations (see para 11).

(3) The issue here was one of law which was whether on the facts as presented, the respondents were entitled or otherwise to the termination benefits payment. Irrespective of whether the appellant in its letter mentioned expressly or otherwise of the necessary provisions of law, the facts would determine the law as applicable. The facts may disclose the issue of common law principle of contract but the same facts may raise the very issue that the court had to make a decision upon, which in this case was the issue of termination benefits payment claimed by the respondents which was governed by the 1980 Regulations (see para 12).

[Bahasa Malaysia summary

Responden pertama adalah mandur dan yang lain-lain adalah penoreh getah yang bekerja di Ladang Claire yang dimiliki perayu. Perayu telah melalui satu surat bertarikh 31 Oktober 1995 memberikan 8 minggu notis penamatan kerja berkuat kuasa dari 1 Januari 1996. Akan tetapi, lebih kurang 40 hari sebelum 1 Januari 1996, melalui satu surat bertarikh 20 November 1995, menarik balik notis penamatan kerja mereka dan meminta responden supaya menganggap surat bertarikh 31 Oktober 1995 sebagai ditarik balik dan dibatalkan dan mereka disuruh melaporkan diri untuk bekerja sebagai biasa pada 1 Januari. Responden meminta perayu mengekalkan suratnya bertarikh 31 Oktober 1995 dan mengambil langkah membayar faedah penamatan kerja seperti yang dijanjikan pada tempoh penamatan notis tersebut. Perayu menjawab melalui suratnya bertarikh 8 Disember 1995 mengekalkan pendirian mereka menarik balik surat bertarikh 31 Oktober 1995 atas alasan bahawa penarikan balik notis penamatan kerja dilakukan sebelum penamatan tempoh notis. Dengan itu, responden dinasihatkan mematuhi keputusan estet dalam perkara itu dan melaporkan diri seperti biasa pada 1 Januari 1996. Kali ini mereka diberi amaran bahawa kegagalan melaporkan diri pada tarikh tersebut akan sama seperti

meninggalkan kontrak perkhidmatan mereka dengan estet. Responden tidak melaporkan diri untuk bekerja pada 1 Januari 1996. Satu surat tunjuk sebab dihantar kepada responden bertarikh 3 Januari 1996 dan oleh kerana tiada apa-apa dari situ, perayu telah pada 16 Januari 1996 mengeluarkan surat-surat kepada responden memaklumkan bahawa disebabkan mereka enggan balik bekerja, dengan itu mereka disifatkan telah meninggalkan kontrak perkhidmatan mereka dengan syarikat perayu. Hakim bijaksana telah pada 15 Oktober 1999 mengesahkan keputusan Penolong Pengarah Buruh Kanan, Segamat (Pengarah'), membenarkan tuntutan responden untuk satu faedah penamatan kerja di bawah Peraturan-Peraturan Kerja (Faedah-Faedah Penamatan & Rentikerja Sentara) 1980 ('Peraturan-peraturan 1980'). Pengarah telah memerintahkan perayu membayar responden RM114,001.42 sebagai faedah-faedah oleh kerana perayu tidak boleh menarik balik secara satu pihak notis penamatan kerja responden.]

Diputuskan, membenarkan rayuan tersebut:

(1) Berdasarkan fakta-fakta, surat penamatan kerja bertarikh 31 Oktober 1995 dibuat oleh perayu 'tidak kurang daripada 7 hari' menurut peruntukan peraturan 4(3) Peraturan-Peraturan Kerja (Faedah-Faedah Penamatan & Rentikerja Sentara) 1980 sebelum tempoh tarikh perkhidmatan responden ditamatkan, yang sepatutnya pada 1 Januari 1996. Tidak ada apa-apa di dalam Peraturan-peraturan 1980 tersebut yang memerlukan perayu berunding dengan responden. Notis yang diberikan melalui surat 31 Oktober 1995 bukannya berkuat kuasa dengan serta merta. Ia hanya berkuat kuasa pada 1 Januari 1996. Ia berkemungkinan berlaku. Selama peruntukan peraturan 4(3) Peraturan-peraturan 1980 dipatuhi, perayu boleh menarik balik secara satu pihak notis surat bertarikh 31 Oktober 1995 di mana ia telah berbuat demikian di dalam kes ini. Jika ini berlaku, responden tidak berhak ke atas sebarang faedah-faedah penamatan kerja (lihat perenggan 10).

(2) Di dalam kes ini, prinsip asas bukannya kontrak undang-undang oleh kerana tuntutan responden adalah di bawah Peraturan-Peraturan 1980 tersebut. Dengan itu, Peraturan-Peraturan tersebut mesti menentukan isu-isu ini. Peraturan-Peraturan melalui Peraturan 4(3) membenarkan perayu menarik balik notis sebegini dan menawar untuk memperbaharui kontrak perkhidmatan responden atau mengambil responden di bawah kontrak baru jika ia berbuat demikian, tidak kurang daripada 7 hari sebelum 1 Januari 1996, ini tidak akan memberi hak kepada responden daripada menerima sebarang pembayaran faedah-faedah penamatan kerja. Dalam kes ini, perayu telah berbuat demikian melalui suratnya bertarikh 20 November 1995 mematuhi segala keperluan peraturan 4(3) Peraturan-peraturan tersebut (lihat perenggan 11).

(3) Isu di sini adalah berkaitan dengan undang-undang iaitu sama ada berdasarkan fakta-fakta yang diberikan responden berhak atau tidak kepada pembayaran faedah-faedah penamatan kerja. Tidak kira sama ada perayu melalui suratnya menyebut secara khususnya atau tidak kepada peruntukan undang-undang, fakta-fakta akan menentukan undang-undang seperti yang perlu dipakai. Fakta-fakta kemungkinan mendedahkan satu prinsip undang-undang kontrak

common law tetapi fakta-fakta yang sama berkemungkinan membangkitkan isu-isu yang mahkamah perlu membuat keputusan, di dalam kes ini isu berhubungan dengan pembayaran faedah-faedah penamatan kerja yang dituntut oleh responden dan yang ditentukan oleh Peraturan-peraturan 1980 (lihat perenggan 12).

Notes

For cases on termination of employment, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1048–1054.

Cases referred to

Harris & Russel Ltd v Slingsby [1973] 3 All ER 31 (distd)
Jamil bin Harun v Yang Kamsiah & Anor [1984] 1 MLJ 217 (refd)
Kerisna a/l Govindasamy lwn Highlands & Lowlands, Ladang Bukit Selarong [2003] 6 MLJ 739 (not folld)

Legislations referred to

Employment Act 1955 ss 12, 69
Employment (Termination and Lay-Off Benefits) Regulations 1980 reg 4(3)

Ramadas (R Visha Devi with him) (Ramadass & Associates) for the appellant.
P Kupusamy (VK Raj with him) (P Kuppusamy & Co) for the respondent.

Abdul Kadir Sulaiman JCA (delivering judgment of the court):

[1] This is an appeal against the decision of the learned judge of 15 October 1999 affirming the decision of the Penolong Pengarah Buruh Kanan, Segamat ('the Pengarah'), allowing the claim of the respondents for termination benefits under the Employment (Termination and Lay-Off Benefits) Regulations 1980 ('the 1980 Regulations'). The Pengarah made an order for the appellant to pay the respondents RM114,001.42 as such benefits because the appellant could not withdraw unilaterally its notice to terminate the services of the respondents. We heard the arguments on 6 April 2004 and reserved our decision on the appeal. We now provide our decision.

[2] The first respondent was a mandore and the rest were rubber tappers employed by the Claire Estate owned by the appellant. The appellant by a letter dated 31 October 1995 gave them eight weeks termination notice to take effect from 1 January 1996. The reason given was that their positions on the estate would be redundant as a result of the felling of old rubber trees in the estate. They were told that their employment with the Estate would cease on 1 January 1996 when appropriate termination benefits and any other monies due to them would be paid. However, some 40 days before 1 January 1996, the appellant by another letter of 20 November 1995, informed them that due to a review of the company's policy on the matter it has been decided that they would not be declared redundant upon the felling of the old rubber trees. They were requested to treat the appellant's earlier letter of 31 October 1995 as withdrawn and cancelled and they were told to report for work as usual on 1 January 1996 whereupon they would be allotted their normal

duties. This information concerning the change of policy on the part of the appellant did not come as a relief to the respondents, for by a letter dated 5 December 1995, they informed the appellant that they have made all necessary arrangements in accordance with the appellant's letter of 31 October 1995 terminating their services on 1 January 1996. They requested the appellant to abide by its letter of 31 October 1995 and to make appropriate steps to pay out the termination benefits, as promised, on expiry of the termination notice. The appellant responded by its letter of 8th December 1995 maintaining the validity of its stand to withdraw the letter of 31 October 1995 on grounds that the withdrawal of the notice of termination was effected well in advance of the expiry of the notice period. As such, the respondents were accordingly advised to abide by the estate's decision on the matter and to report for work as usual on 1 January 1996 whereupon they would be allotted their normal duties. This time they were warned that failure to report for work on that date would tantamount to abandoning their contract of service with the estate.

[3] The respondents did not return to work on 1 January 1996 as expected. So by a letter dated 3 January 1996, the appellant wrote to them as follows:

> Dear Sir,
>
> Re: Absence from Work
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> We refer you to our letters Ref. 29/401-95 dated 20 November 1995 and 31/401-95 dated 8 December 1995 instructing you to report for work as usual on 1 January 1996. We note that till this date you have failed to report for work as directed without just cause or excuse and without prior permission from the Management. As you may no doubt be aware, vide s 15(2) of the Employment Act 1955, you shall be deemed to have broken your contract of service if you have been continuously absent from work for more than two consecutive working days without prior leave or no reasonable excuse for such absence.
>
> In view of your absence from work without prior leave, you are now required to show cause in writing on receipt of this letter as to why the Management should not treat your absence as abandonment of your contract of service.
>
> You are further advised that should you failed or refuse to respond to this letter immediately, and/or your reply is unsatisfactory, the Management reserves the right to take any form of disciplinary action against you or alternatively it will be construed that you have broken your contract of service by your continued absence and the Management will further construe that you have unreasonably refused to accept the continuous employment offered vide our letters dated 20 November 1995 and 8 December 1995.
>
> In conclusion, should there be no response from you within two days of receipt of this letter, the Management would proceed to assign other workers to the task originally allocated to you.
>
> Please acknowledge receipt of this letter.
>
> Thank You.

[4] Nothing came out of its letter dated 3 January 1996, the appellant on 16 January 1996 issued letters to the respondents informing them to the effect that since they have decided not to return to work, they have therefore, abandoned their contract of service with the company and accordingly were no longer in the employment of the company.

[5] In the meantime, conciliation steps were taken by the Labour Department to resolve the dispute between them, but without success. On 19 January 1996, the respondents lodged their complaint with the Segamat, Labour Office under s 69 of the Employment Act 1955 which allows the Pengarah to inquire into and decide any dispute between an employee and his employer in respect of wages or any other payments in cash due to such employee under any of the provisions of the Act or any subsidiary legislation made thereunder. In this case the complaint by the respondents was over non-payment of their termination benefits by the appellant pursuant to the 1980 Regulations.

[6] Their complaint was inquired into by the Pengarah. As we see it, the issue here really is whether on the facts alleged, the respondents are entitled in law to be paid the termination benefits provided for by the 1980 Regulations. But from the records, we found that both the Pengarah and the learned judge concentrated on the issue of whether on the given facts the appellant is entitled to withdraw the termination notice given to the respondents unilaterally, ie without the consent of the respondents. Having decided that the appellant was not entitled to do so, the Pengarah went ahead to order the appellant to pay the termination benefits without having regards to the express provisions of the 1980 Regulations relating to termination benefits payment. It could be seen that the Pengarah, and subsequently the learned judge, had overlooked or misconstrued some statutory provision or had committed some error of legal principle (see *Jamil bin Harun v Yang Kamsiah & Anor* [1984] 1 MLJ 217, a Privy Council decision.

[7] According to the record, this is what the Pengarah said in his judgment:

> 5. Mahkamah mendapati terdapat isu-isu yang berbangkit dari kes ini ialah: satu — adakah surat perberhentian kerja ini boleh ditarik semula tanpa persetujuan pengadu-pengadu sebelum tarikh tamat notis dan keduanya — adakah pengadu-pengadu layak mendapat bayaran faedah rentikerja dibawah Peraturan-Peraturan (Faedah Rentikerja Dan Rentikerja Sentara) Kerja 1980 jika pengadu-pengadu menolak surat penarikan semula notis penamatan perkhidmatan defendan (P1-5 dan P1-6).

[8] Citing s 12 of the Employment Act 1955, the Pengarah was of the view as follows:

> 7. Oleh itu s 12(1) Akta Kerja 1955 lebih mementingkan niat (intention) pihak defendan kepada pengadu-pengadu. Justeru itu surat penarikan balik (P1-5 & 6) terhadap surat notis (P1-3) adalah mengelirukan pengadu-pengadu tanpa memikirkan kesannya dan tanpa pertimbangan yang waras seandainya dibenarkan. Pengadu-pengadu akan kehilangan faedah-faedah statutori dibawah Akta Kerja 1955. Terutama yang telah berkhidmat lebih 30 tahun. Ini merupakan suatu kezaliman kepada hak-hak pekerja akibat tindakan pihak defendan yang tidak professional dalam menjalankan tugas seperti yang dikehendaki di bawah Undang-Undang Buruh Negara ini (eksh D1 berkenaan).
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> 9. Defendan hendaklah membayar sejumlah RM114,001.42 seperti 'Perintah' kepada Penolong Pengarah Buruh Segamat bagi pihak pengadu-pengadu atau melalui peguamcara mereka dan dimaklumkan ke mahkamah ini."

[9] We are of the view that the Pengarah had seriously misdirected himself which amounts to a non-direction on the issue before him in view of the statutory provisions of reg 4(3) of the 1980 Regulations, the very Regulations under which the claim by the respondents was made, ie for termination benefits payment. The regulation states as follows:

> 4(3) An employee *shall not be entitled* to any termination benefits payment if, *not less than seven days before the date with effect from which his services are to be terminated*, the employer has offered to renew his contract of service or to re-engage him under a new contract, so that —
>
> (a) the provisions of the contract as renewed, or of the new contract, as the case may be, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, *would not be less* favourable than the corresponding provisions of the contract as in force immediately before the termination of his services;
>
> (b) the renewal or re-engagement would take effect *on or before the date* with effect from which his services are to be terminated, and the employee has unreasonably refused that offer. (Emphasis added.)

[10] On the facts, the withdrawal of the letter of notice dated 31 October 1995 was made by the appellant 'not less than seven days' as so provided by the express provisions of reg 4(3) of the 1980 Regulations, before the date with effect from which the services of the respondents were to be terminated, which was to be on 1 January 1996. By the letter of 20 November 1995 withdrawing the letter of 31 October 1995 the respondents were told to continue to report for work as usual on 1 January 1996 whereupon they would be allotted their normal duties. They were not happy because the appellant acted unilaterally to do so without first consulting them. As we see it, there is nothing in the provisions of the 1980 Regulations which require the appellant to do so. The notice given in the letter of 31 October 1995 is not of immediate effect. It is to be effective only on 1 January 1996. It is contingent in nature. For so long as the provisions of reg 4(3) of the 1980 Regulations is complied with, the appellant may unilaterally withdraw the notice letter of 31 October 1995 which it did in this case. If that happens, the respondents would not be entitled to any termination benefits. So, on the facts and the law, the Pengarah ought not to have penalized the appellant in the way he did by awarding against it the termination benefits payment to the respondents having regards to the provisions of the 1980 Regulations upon which the respondents' claim was based.

[11] Be that as it may, the matter went on appeal to the learned judge. Before the learned judge it was submitted on behalf of the appellant on the inapplicability of the common law principle in the light of the statutory provisions of reg 4(3) of the 1980 Regulations. But the learned judge was unable to subscribe to the submissions put forward on behalf of the appellant. This is because, according to the learned judge, the letter dated 20 November 1995 issued to the respondents cannot be said to be issued under reg 4(3) of the 1980 Regulations because the letter made no mention or reference to the said reg 4(3) of the 1980 Regulations. Thus without the agreement of the respondents to cancel the notice, the learned judge said the termination must run its course. The learned judge cited the case of *Harris & Russel Ltd v Slingsby* [1973] 3 All ER 31 in support. Upon perusal of the case cited, we are of the view that

the case can easily be distinguished from the present sets of facts. The case was decided on the basis of the law of contract relating to offer and acceptance by parties to a contract. Once the offer is accepted, it cannot be withdrawn except by the agreement of the offeree. In that case, the respondent who was working for the appellant, gave a month's notice of termination from 1 January 1973. This is considered as an offer made by the respondent. The said offer was accepted by the appellant on 10 January 1973. Until the end of the period the respondent did not withdraw his notice. The industrial tribunal made a finding that the appellant had unfairly dismissed the respondent and made an award of compensation consequent upon the finding of unfair dismissal. On appeal against the decision of the industrial tribunal, the National Industrial Relations Court held that where one of the parties to a contract of service gave notice determining the contract, that party could not thereafter unilaterally withdraw the notice. Although it was always open to the other party to agree to the withdrawal of the notice, in the absence of the agreement the notice would stand and the contract would terminate on the effluxion of the period of notice. On the basis of the law of contract, we wholly agree with the decision of the case. But in our present case, the basis is not the contract law because the claim by the respondents is on the 1980 Regulations. Hence, that Regulations must determine the issue at hand. The 1980 Regulations by the provisions of reg 4(3) thereof expressly allow the appellant to withdraw such a notice and to offer to renew the respondents' contract of service or to re-engage the respondents under a new contract provided he did so, not less than seven days before 1 January 1996, thereby disentitling the respondents from receiving any termination benefits payment. In this case, the appellant did so by its letter of 20 November 1995 complying with the necessary requirements of reg 4(3) of the 1980 Regulations. Hence, the decision in *Slingsby*, which the learned judge based his decision upon is clearly irrelevant in deciding as to whether the respondents are entitled to the termination benefits payment or otherwise.

[12] For our part, we are of the view that the issue here is one of law which is whether on the facts as presented the respondents are entitled or otherwise to the termination benefits payment. Irrespective of whether the appellant in its letter mentioned expressly or otherwise of the necessary provisions of law, the facts would determine the law as applicable. The facts may disclose the issue of common law principle of contract but the same facts may raise the very issue that the court has to make a decision upon, which in this case is the issue of termination benefits payment claimed by the respondents which is governed by the 1980 Regulations. Hence, the court cannot overlook the very matter which it has to decide upon. By confining itself to the issue of the common law principle of contract and ignoring the very issue for which a decision is called upon, the learned judge has erred in coming to his decision on the matter.

[13] Before us in this appeal, the learned counsel for the respondents submitted that the letter of the appellant of 20 November 1995 was not an offer to renew the contract of the respondents echoing the words of the learned judge that the letter cannot be said to be issued under reg 4(3) of the 1980 Regulation. We cannot agree with that line of submission. The letter of 20 November 1995, in our view, is clear from its wordings that it is a letter from the appellant/employer offering to the

respondents/ employees to renew their contract of service with the appellant which but for this letter would have terminated on 1 January 1996. This offer was made not less than seven days from that date as so required by reg 4(3) of the 1980 Regulations. Such offer made would not be less favourable than the corresponding contract then in existence. Such renewal of the contract of service would take effect on the date with effect from which the services of the employee are to be terminated, which is on 1 January 1996. Had the respondents reported for work on 1 January 1996, there would clearly be a continuity of service without any break. Unfortunately, by not turning up for work as offered on 1 January 1996, the respondents had in our view, unreasonably refused that offer sticking to their stand that the termination notice letter of 31 October 1995 could not be withdrawn by the appellant without their consent. So, by the operation of reg 4(3) of the 1980 Regulations, the respondents are not entitled to any termination benefits payment.

[14] Next, the learned counsel for the respondent submitted to us the case of *Kerisna a/l Govindasamy lwn Highlands & Lowlands, Ladang Bukit Selarong* [2003] 6 MLJ 739, a High Court decision from Alor Star, as being on all fours with the present case under appeal. In that case, the appellant was a mandore working in the respondent's rubber estate. On 1 November 1998 the respondent issued a notice of termination of service to take effect from 1 January 1999 with similar promise for compensation or benefit under the 1980 Regulations. However, by another letter of 15 December 1998, the respondent withdrew the said notice letter on ground of mistake. It was not intended for the appellant. He was therefore told that his services would not be terminated and he was to carry on work as usual. Considering that the notice letter was effective, the appellant no longer went to work with the respondent from 1 January 1999. The appellant lodged the same complaint with the Labour Department claiming that he had not been paid any compensation from the respondent for terminating his services. The Labour Department turned down his claim on the ground that the respondent had no intention to dismiss the appellant. Furthermore, the correspondence took place during the notice period when the appellant was still in the employment of the respondent. The appellant took advantage of the mistake of the respondent to stop work with a hope to get the termination benefit. Aggrieved over that decision dismissing his claim, the appellant appealed to the High Court. In the High Court, the learned judge allowed the appeal by holding as follows:

> Mahkamah mendapati bahawa Pegawai Buruh telah khilaf dari segi undang-undang apabila memutuskan bahawa respondent boleh menarik balik notis penamatan kerja atas alasan notis tersebut tersilap diberi kepada perayu. Sepertimana yang telah diputuskan di atas, responden hanya boleh menarik balik notis penamatan kerja perayu jika mendapat persetujuan perayu, tidak kira atas apa alasan sekalipun. Di samping itu Pegawai Buruh juga khilaf kerana tidak mengambilkira peruntukan s 12(3)(a) dan (d) Akta Kerja 1955 yang terpakai kepada kes ini. Mahkamah mendapati bahawa *perayu tidak tertakluk kepada mana-mana situasi di bawah reg 4, Employment (Terminationand Lay-off Benefits) Regulations 1980* yang menghalangnya daripada mendapat faedah penamatan kerja. Oleh kerana perayu telah diberhentikan kerja oleh responden sebelum perayu mencapai umur pesaraan, maka mahkamah memutuskan bahawa perayu berhak mendapat faedah penamatan kerja sebanyak RM17,480 sepertimana tuntutan perayu. (Emphasis added.)

[15] It is to be noted that in that case, the termination of service was to take effect on 1 January 1999 and the letter withdrawing the notice to terminate was dated 15 December 1998, well over the minimum period allowed by reg 4(3) of the 1980 Regulations of seven days. In the circumstances, the non-entitlement of the termination benefits payment condition would have applied. In the circumstances, we cannot see in what manner that the appellant there was said to be not subjected to any situation under reg 4 of the 1980 Regulations. We notice that in these two cases, the mind of the learned judges had been clouded by the issue under the Employment Act 1955 so much so that the very issue before the courts which in each case is a claim for termination benefits provided by the 1980 Regulations had been overlooked. We feel that the case of *Kerisna a/l Govindasamy* was wrongly decided. In any event, we were told by the learned counsel for the appellant in the present appeal before us, that *Kerisna a/l Govindasamy*, is under appeal to the Court of Appeal and that leave to do so had been granted. In the circumstances, the submission of the learned counsel for the respondent on the case lacks any merit for our consideration.

[16] So, for all those reasons, we are of the view that this appeal by the appellant must be allowed with costs here and below. Accordingly, the decision of the learned judge is hereby set aside.

Appeal allowed.

Reported by Sally Kee